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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 160907828-6828-01]

RIN 0648-BG01

Wisconsin - Lake Michigan National Marine Sanctuary; Notice of Proposed Rulemaking and Availability of Draft Environmental Impact Statement and Management Plan

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing to designate an area of 1,075 square miles of Wisconsin state waters as the Wisconsin - Lake Michigan National Marine Sanctuary (WLMNMS or sanctuary). NOAA also proposes regulations to implement the sanctuary designation and establish the sanctuary's terms of designation. A draft environmental impact statement and draft management plan have also been prepared for this proposed action. The purpose of this action is to supplement current Wisconsin state regulations and resource protection efforts in a way that will ensure long term protection of

the nationally significant collection of historic shipwrecks and other maritime heritage resources in the area. NOAA is soliciting public comment on the proposed rule, draft environmental impact statement (DEIS), and draft management plan (DMP). NOAA will also begin consultations under Section 106 of the National Historic Preservation Act (NHPA) and solicit public comments specifically related to the identification and assessment of the historic properties within the affected area in compliance with Section 106 review process.

DATES: NOAA will consider all comments received by March 31, 2017. Public meetings will be held on the following dates:

- 1) March 13, 2017, 6:30 p.m. to 8:30 p.m., Algoma, WI;
- 2) March 14, 2017, 6:30 p.m. to 8:30 p.m., Manitowoc, WI;
- 3) March 15, 2017, 6:30 p.m. to 8:30 p.m., Sheboygan, WI; and
- 4) March 16, 2017, 6:30 p.m. to 8:30 p.m., Port Washington, WI.

ADDRESSES: You may submit comments on this document, identified by NOAA-NOS-2016-0150, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NOS-2016-0150, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- Mail: Russ Green, Regional Coordinator, Northeast and Great Lakes Region, NOAA
Office of National Marine Sanctuaries, University of Wisconsin-Sheboygan, One
University Drive, Sheboygan, WI 53081

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the proposed rule, DEIS, and DMP can be downloaded or viewed on the internet at www.regulations.gov (search for docket # NOAA-NOS-2016-0150) or at www.regulations.gov/#!docketDetail;D=NOAA-NOS-2016-0150. Copies can also be obtained by contacting the person identified under “For Further Information Contact”.

The public meeting locations are:

- 1) Algoma, WI: Knudson Hall, 620 Lake Street, Algoma, WI, 54201 (March 13, 2017)
- 2) Manitowoc, WI: Wisconsin Maritime Museum, 75 Maritime Dr., Manitowoc, WI, 54220 (March 14, 2017)
- 3) Sheboygan, WI: University of Wisconsin-Sheboygan, Main Building, Wombat Room (Room 2114), 1 University Drive, Sheboygan, WI, 53081 (March 15, 2017)

4) Port Washington, WI: Wilson House, 200 N. Franklin St., Port Washington, WI, 53074

(March 16, 2017)

FOR FURTHER INFORMATION CONTACT: Russ Green, Regional Coordinator,
Northeast and Great Lakes Region at (920) 459-4425 or russ.green@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Wisconsin - Lake Michigan National Marine Sanctuary Background

The National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 et seq.) authorizes the Secretary of Commerce (Secretary) to designate and protect as national marine sanctuaries areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to NOAA's Office of National Marine Sanctuaries (ONMS). The primary objective of the NMSA is to protect the sanctuary system's biological and cultural resources, such as coral reefs, marine animals, historic shipwrecks, other historic structures, and archaeological sites.

The 1,075-square-mile area proposed for designation as the Wisconsin – Lake Michigan National Marine Sanctuary encompasses the waters and bottomlands of Lake Michigan adjacent to Manitowoc, Sheboygan, and Ozaukee Counties. Principal cities in this area include Port

Washington, Sheboygan, Manitowoc, Two Rivers, and Mequon. The boundary includes 80 miles of shoreline and extends 7 to 16 miles from the shoreline.

The area includes a nationally significant collection of maritime heritage resources, including 37 known shipwrecks, about 80 suspected shipwrecks, and numerous other historic maritime-related features such as historic cribs, docks, and piers. The historic shipwrecks in the proposed sanctuary are representative of the vessels that sailed and steamed this corridor, carrying grain and raw materials east as other vessels came west loaded with coal, manufactured goods, and people. Eighteen of the 37 shipwreck sites are listed on the National Register of Historic Places. Many of the shipwrecks in the proposed sanctuary retain an unusual degree of architectural integrity, with 14 vessels nearly intact. Well preserved by Lake Michigan's cold, fresh water, the shipwrecks and related maritime heritage sites in and around the proposed Wisconsin – Lake Michigan National Marine Sanctuary possess exceptional historical, archaeological and recreational value.

On December 2, 2014, pursuant to section 304 of the NMSA and the Sanctuary Nomination Process (SNP; 79 FR 33851), Wisconsin Governor Scott Walker, on behalf of the State of Wisconsin; the Cities of Two Rivers, Manitowoc, Sheboygan, and Port Washington; the Counties of Ozaukee, Sheboygan, and Manitowoc, submitted a nomination asking NOAA to consider designating this area of Wisconsin's Lake Michigan waters as a national marine sanctuary. The State of Wisconsin's selection of this geographic area for the nomination drew heavily from a 2008 report conducted by the Wisconsin History Society and funded by the Wisconsin Coastal Management Program ([Wisconsin's Historic Shipwrecks: An Overview and](#)

Analysis of Locations for a State/Federal Partnership with the National Marine Sanctuary Program, 2008,

<http://www.maritimetrails.org/assets/pages/Wisconsins%20Historic%20Shipwrecks.pdf>). The nomination also identified opportunities for NOAA to strengthen and expand on resource protection, education, and research programs by state of Wisconsin agencies and in the four communities along the Lake Michigan coast. NOAA completed its review of the nomination, and on February 5, 2015 added the area to the inventory of nominations that are eligible for designation. All nominations submitted to NOAA can be found at:
<http://www.nominate.noaa.gov/nominations/>.

NOAA began the sanctuary designation process for Wisconsin - Lake Michigan National Marine Sanctuary on October 7, 2015 with the publication of a notice of intent (NOI; 80 FR 60631) to prepare a DEIS and the initiation of a public process, as required under the NMSA and the National Environmental Policy Act (NEPA). The DEIS evaluates alternatives related to the proposed designation of the area, including a preferred alternative. The NOI also announced NOAA's intent to fulfill its responsibilities under the requirements of the NHPA.

A duplicate version of the notice for intent was published in error two days earlier on October 5, 2015 (80 FR 60132). That publication contained the exact same content as the official version made available for public inspection and published on October 7, 2015 (80 FR 60631). Any comments received in connection with the publication in error on October 5, 2015 were accepted and considered by NOAA.

B. Need for Action

Establishing a national marine sanctuary in Wisconsin waters would complement and supplement existing state-led preservation efforts, research programs, and public outreach initiatives. Threats to the nationally significant resources in the area include both human activities and natural processes. Natural processes include the damaging impacts of wind, waves, storms, and ice, as well as the impact of invasive species such as zebra and quagga mussels that today cover most of Lake Michigan's shipwrecks. Human threats to underwater cultural resources include looting and altering sanctuary shipwreck sites and damaging sites by anchoring. These processes threaten the long term sustainability of historic shipwrecks and other underwater cultural resources, and negatively impact their recreational and archaeological value. Examples of these impacts include: anchor damage from visiting dive boats, damage due to unpermitted and poorly attached mooring lines, artifacts being looted, artifacts being moved within a shipwreck site, a remotely-operated vehicle tether entangled within a shipwreck, fishing gear entangled within a shipwreck, increased invasive mussel coverage, and the disturbance and natural deterioration of newly uncovered shipwrecks within the boundary's large swaths of shallow, sandy lakebottom.

The sanctuary would enhance and facilitate broader lake conservation efforts as well as heritage tourism within the many communities that have embraced their centuries-long maritime relationship with Lake Michigan, the Great Lakes region, and the nation. A sanctuary designation would enhance existing comprehensive management programs. The presence of a sanctuary would provide access to NOAA's extended network of scientific expertise and

technological resources, enhance ongoing research, and provide an umbrella for the coordination of these activities. It would support and build on existing educational initiatives and provide programming and technology for K-12, post-graduate, and the general public across the state. A sanctuary designation, the local commitment to the sanctuary, the existing state agency interest, and NOAA's existing network of affiliated programs has the potential to create synergies that reach far beyond the proposed sanctuary boundaries.

C. Designation process

National Marine Sanctuary Designation Process

NOAA may identify areas to consider for national marine sanctuary designation through the community-based SNP described above. The process for designating a new national marine sanctuary is described in the NMSA and has four steps:

Scoping: NOAA announces its intent to designate a new national marine sanctuary and asks the public for input on potential boundaries, resources that could be protected, issues NOAA should consider and any information that should be included in the detailed resource analysis in a draft environmental impact statement.

Sanctuary Proposal: NOAA prepares draft designation documents including a DMP, DEIS that analyzes a range of alternatives, proposed regulations and proposed boundaries.

Public Review: The public, agency partners, tribes and other stakeholders provide input on the draft documents. The public review step also includes the formal consultations required

under NEPA, the NMSA, the NHPA, and other relevant statutes. NOAA considers all input and determines appropriate changes.

Sanctuary Designation: NOAA makes a final decision and prepares final documents.

Before the designation becomes effective, the Governor reviews the documents. Congress also has the opportunity to review the documents.

Public Scoping Process

On October 7, 2015 NOAA initiated the public scoping process with the publication of the NOI in the Federal Register (80 FR 60631) asking for public input on the proposed designation and informing the public that NOAA intended to prepare a DEIS evaluating alternatives related to the proposed designation of Wisconsin-Lake Michigan National Marine Sanctuary under NMSA. That announcement initiated a 90-day public comment period during which NOAA solicited additional input related to the scale and scope of the proposed sanctuary, including ideas presented in the community nomination. The NOI also announced NOAA's intent to fulfill its responsibilities under the requirements of NHPA.

During the public comment period, NOAA hosted three public meetings in November 2015 and provided additional opportunity for comments through a web-based portal [<https://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2015-0112>] and by traditional mail until January 15, 2016. All comments received, through any of these formats, were publicly posted on the www.regulations.gov web portal.

During this period, approximately 135 individuals provided input. Comments were overwhelmingly supportive of the goals of sanctuary designation, including the rationale for

conservation of nationally-significant resources, considerations that enhance public use and recreation, considerations that enhance tourism and the local economy, and as a venue for education, science and interpretation as described in the community nomination.

The comments underscored the need for conservation and interpretation, particularly the importance of educating users about the importance of the Great Lakes and the role that shipbuilding and shipping commerce has played in the history of the region and our nation. There was strong support from local communities, governments, and organizations supporting sanctuary designation and offering opportunities to partner for education, research, outreach and other activities.

Several commenters who otherwise supported sanctuary designation expressed concern that designation should not in any way disrupt existing lake commerce. Specific concerns focused on the need for continued ability to dredge and maintain ports and the continued ability for ships to ballast in port and in open water.

The few comments in opposition to sanctuary designation were concerned about the cost of implementation, the possibility that designation would make metal detecting illegal, and that designation would be an unneeded level of government intervention.

There were several requests that NOAA consider expanding the proposed boundaries. Several comments suggesting expansion north to include shipwrecks in Kewaunee County, and one commenter requested inclusion of Green Bay.

NOAA used the public comments submitted during the scoping process to inform the preparation of the DMP, DEIS, and the proposed sanctuary regulations. In response to many of

these comments, this proposed rule proposes to provide additional protection to maritime heritage resources, particularly the nationally significant collection of historic shipwrecks. The environmental effects of these proposed designations are analyzed in a DEIS published concurrently with this proposed rule. NOAA has also developed an associated DMP describing sanctuary management activities in the area proposed for designation. NOAA is seeking public comment on the proposed rule, DEIS, and DMP, which are available at <http://sanctuaries.noaa.gov/wisconsin/> or may be obtained by contacting the individual listed under the heading FOR FURTHER INFORMATION CONTACT.

II. Summary of the Proposed Regulations

1. Adding new Subpart T and Reserving Subpart S

NOAA is proposing to amend 15 CFR part 922 by adding a new subpart (subpart T) that contains site-specific regulations for WLMNMS. This subpart would include the proposed boundary, contain definitions of common terms used in the new subpart, provide a framework for co-management of the sanctuary, identify prohibited activities and exceptions, and establish procedures for certification of existing uses, permitting otherwise prohibited activities, and emergency regulation procedures. Several conforming changes would also be made to the national sanctuary regulations as described below.

NOAA is concurrently working on designating a separate new national marine sanctuary in Malloys Bay – Potomac River waters as part of a separate rulemaking process, and those regulations would be published in their own new subpart (subpart S). As such, in this

rulemaking, NOAA proposes to add and reserve subpart S for any future site-specific regulations that might be issued. NOAA would harmonize the regulations for the Mallows Bay-Potomac River designation process with any final rule associated with this action.

2. Proposed Sanctuary Name

NOAA has proposed to name the sanctuary the “Wisconsin – Lake Michigan National Marine Sanctuary (WLMNMS)” based on the nomination submitted by the community. This name aptly identifies both the lake and state where the proposed sanctuary is located. NOAA is asking for the public to provide input on this proposed name. The public may also suggest an alternative name and state the reasons for suggesting an alternative name.

3. Proposed Sanctuary Boundary

NOAA is proposing to designate a 1,075-square mile area of Lake Michigan waters off Ozaukee, Sheboygan, and Manitowoc Counties as WLMNMS. The sanctuary’s shoreward boundary would be defined by the Ordinary High Water Mark as defined by the state of Wisconsin, while the lakeward boundary would be drawn to include all known shipwrecks in each county, extending 16 miles offshore at its greatest extent. The harbors and marinas of Two Rivers, Manitowoc, Sheboygan, and Port Washington would not be included in the sanctuary. The detailed legal boundary description is included in section 922.210 and the coordinates are located in 15 CFR part 922, subpart T, appendix A. A map of the area is shown in the DEIS.

Within this proposed boundary are 37 known shipwrecks, including 18 on the National Register of Historic Places. The sanctuary would provide comprehensive protection of underwater cultural resources as well as develop partnerships and resources for education, interpretation, personnel, research, and administration. This would provide enhanced management of underwater cultural resources, as well as potential economic benefits to the coastal communities from Mequon to Two Rivers.

The proposed boundary reflects the boundary the State of Wisconsin submitted to NOAA in the nomination with an adjustment based on discussions with the State of Wisconsin. The State submitted an 875-square-mile boundary in the nomination. NOAA's adjustments result in a 1,075-square-mile boundary, and includes moving the southern and northern boundary lines to the county lines and expanding the southeast corners to include the shipwreck site of the Senator (its location was previously unknown), and excluding ports and harbors.

4. Definitions

NOAA is proposing a site-specific definition of "sanctuary resources" for the WLMNMS to be tailored to include only the underwater cultural resources found in this area in accordance with the purpose of the proposed designation. The definition would not include biological and ecological resources of the area. Creating this new site-specific definition requires NOAA to modify the national definition of "sanctuary resource" in the national regulations at section 922.3 to add an additional sentence that defines the term for WLMNMS at section 922.211(a). This is

similar to the approach taken for other national marine sanctuaries that do not share the full “sanctuary resource” definition such as Thunder Bay National Marine Sanctuary.

The new WLMNMS definition of “sanctuary resources” would be all prehistoric, historic, archaeological, and cultural sites and artifacts within the sanctuary boundary, including but not limited to, all shipwrecks and related components.

Additionally NOAA would add a definition for “shipwreck site” in the WLMNMS regulations at Section 922.211(a) that would define a subset of the “sanctuary resources.” The definition for “shipwreck site” would be more narrowly focused than the broader “sanctuary resource” definition and would be used in one of the prohibited activities regulations.

“Shipwreck site” is defined as any sunken watercraft, its components, cargo, contents, and associated debris field.

This proposed rule incorporates and adopts other common terms defined in the existing national regulations at section 922.3. One of the common terms adopted (without modification) is “National Marine Sanctuary” or “Sanctuary,” which means an area of the marine environment of special national significance due to its resource or human-use values, which is designated as such to ensure its conservation and management.

5. Co-management of the Sanctuary

In order to further enhance the engagement forged by the State of Wisconsin in nominating this area to become a national marine sanctuary, NOAA is proposing to manage the sanctuary collaboratively with the State of Wisconsin. NOAA proposes to establish the

framework for co-management of the sanctuary at section 922.212 and intends to work out the operational details of the collaboration in a Memorandum of Understanding (MOU). Details on the execution of sanctuary management such as activities, programs, and permitting programs would be included in the MOU and can be updated to adapt to changing conditions or threats to the sanctuary resources. Any significant changes to the regulations or management plan would not only be jointly coordinated but also subject to public review.

6. Prohibited and regulated activities

NOAA is proposing to supplement and complement existing management of this area by proposing three regulations to protect the sanctuary resources in section 922.213(a).

a. Damaging Sanctuary Resources

As a complement to existing protections under state law and NHPA regulations, NOAA is proposing to prohibit moving, removing, recovering, altering, destroying, possessing or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a sanctuary resource. This sanctuary prohibition would supplement the existing Wisconsin regulations that prohibit damaging shipwrecks. Since 1991 Wisconsin has had state regulations related to removing or damaging shipwrecks that currently apply to the proposed area and would continue to apply to these resources after sanctuary designation.

b. Anchoring or Grappling on a Shipwreck Site

NOAA is proposing to prohibit the use of grappling hooks and anchoring devices into shipwreck sites to protect fragile shipwrecks within the sanctuary from damage. To provide the public adequate notice of shipwreck sites, NOAA will prepare and make available sanctuary maps with known and suspected shipwreck sites. Shipwreck sites not listed on maps would still be sanctuary resources and the prohibition on anchoring and grappling would still apply. The proposed management plan includes activities related to surveying the sanctuary area and identifying additional shipwreck sites. As appropriate, and in consideration of resource management conflicts, NOAA would update the maps as new shipwreck sites are found by the sanctuary, the Wisconsin Historical Society, or other public or private groups and individuals. Because NOAA seeks to promote public access, while also ensuring sound resource protection, an initial focus of the sanctuary management plan will be the installation of permanent mooring systems at sanctuary shipwreck sites. The moorings will provide a secure and convenient anchoring point for users, eliminating the need for grappling, and providing additional notice of the location of any known shipwreck site. NOAA is proposing to publish guidelines on best practices for anchoring near shipwrecks sites to avoid violating this prohibition. An example of a best practice could include instructions on using a weighted line, with a suggested maximum weight of 15 pounds, and surface float to mark a wreck for divers to descend and ascend. But the line would not use as an anchoring line; it would need to be continuously tended and removed before the dive boat leaves the area.

c. Interfering with investigations

NOAA is proposing a regulation to prohibit interfering with sanctuary enforcement activities. This regulation will assist in NOAA's enforcement of the sanctuary regulations and strengthen sanctuary management.

d. Exemption for Emergencies and Law Enforcement

NOAA is proposing to include an exemption from the three regulations described above for activities that respond to emergencies that threaten lives, property or the environment, or are necessary for law enforcement purposes.

7. Emergency regulations

As part of the proposed designation, NOAA is proposing to give the sanctuary authority to issue emergency regulations. Emergency regulations are used in limited cases and under specific conditions when there is an imminent risk to sanctuary resources and a temporary prohibition would prevent the destruction or loss of those resources. Under the NMSA, NOAA only issues emergency regulations that address an imminent risk for a fixed amount of time with a maximum of 6 months that can be extended a single time. A full rulemaking process must be undertaken, including a public comment period, to consider making an emergency regulation permanent. NOAA would add the authority to issue emergency regulations by modifying the national regulations at section 922.44 to include WLMNMS in a list of sanctuaries that have site-

specific regulations related to emergency regulations, and adding detailed site-specific emergency regulations to the WLMNMS regulations at section 922.214.

8. General Permits, Certifications, Authorizations, and Special Use Permits

a. General Permits

NOAA is proposing to include the authority to issue permits to allow certain activities that would otherwise violate the prohibitions in WLMNMS regulations. Similar to other national marine sanctuaries, NOAA is proposing to consider these permits for the purposes of education, research, or management.

To address the above additions to the ONMS general permit authority for WLMNMS, NOAA would amend regulatory text in the program-wide regulations in part 922, subpart E, to add references to subpart T, as appropriate. NOAA would also add a new section 922.215 in subpart T titled “Permit procedures and review criteria” that would address site-specific permit procedures for WLMNMS.

b. Certifications

Because of the possibility that preexisting activities, right of subsistence use or access permitted by other federal, state, local, or tribal agencies might be occurring within the WLMNMS area that would otherwise be prohibited by WLMNMS regulations, NOAA would add language at section 922.216 describing the process by which it can certify existing activities within the WLMNMS area. In compliance with the NMSA, WLMNMS regulations at section

922.216 would state that certification is the process by which permitted activities existing prior to the designation of the sanctuary that violate sanctuary prohibitions may be allowed to continue, provided certain conditions are met. Applications for certifying permitted existing uses would have to be received by NOAA within 180 days of the effective date of the designation.

c. Authorizations

NOAA also proposes to provide WLMNMS with the authority to consider allowing an otherwise prohibited activity if such activity is specifically authorized by any valid Federal, state, or local lease, permit, license, approval, or other authorization issued after sanctuary designation. Authorization authority is intended to streamline regulatory requirements by reducing the need for multiple permits and would apply to all proposed prohibitions at section 922.213. As such, NOAA proposes to amend the regulatory text at section 922.49 to add reference to subpart T.

d. Special Use Permits

NOAA has the authority under the NMSA to issue special use permits (SUPs) at national marine sanctuaries as established by Section 310 of the NMSA. SUPs can be used to authorize specific activities in a sanctuary if such authorization is necessary 1) to establish conditions of access to and use of any sanctuary resource; or 2) to promote public use and understanding of a sanctuary resource. The activities that qualify for a SUP are set forth in the Federal Register (78 FR 25957; May 3, 2013). Categories of SUPs may be changed or added to through public notice

and comment. NOAA would not apply the SUP to activities in place at the time of the WLMNMS designation.

SUP applications are reviewed to ensure that the activity is compatible with the purposes for which the sanctuary is designated and that the activities carried out under the SUP be conducted in a manner that do not destroy, cause the loss of, or injure sanctuary resources. NOAA also requires SUP permittees to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit. The NMSA allows NOAA to assess and collect fees for the conduct of any activity under a SUP. The fees collected could be used to recover the administrative costs of issuing the permit, the cost of implementing the permit, monitoring costs associated with the conduct of the activity, and the fair market value of the use of sanctuary resources.

9. Other Conforming Amendments

The general regulations in part 922, subpart A, for general information and part 922, subpart E, for regulations of general applicability would also have to be amended so that the regulations are accurate and up-to-date. The 10 sections that will need to be updated to reflect the increased number of sanctuaries or to add subpart T to the list of sanctuaries. The modified sections to conform to adding a new sanctuary are:

- Section 922.1 Applicability of regulations
- Section 922.40 Purpose
- Section 922.41 Boundaries
- Section 922.42 Allowed activities
- Section 922.43 Prohibited or otherwise regulated activities
- Section 922.44 Emergency regulations
- Section 922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights
- Section 922.48 National Marine Sanctuary permits—application procedures and issuance criteria
- Section 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity
- Section 922.50 Appeals of administrative action

10. Terms of Designation

Section 304(a)(4) of the National Marine Sanctuaries Act (NMSA) requires that the terms of designation include the geographic area included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities that will be subject to regulation by the Secretary of Commerce to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. Thus, the terms of designation serve as a constitution for the Sanctuary.

NOAA is proposing to establish terms to designation that describe the geographic area, resources, and activities as described in details above. NOAA would add the terms of designation language as appendix B to the WLMNMS regulations at 15 CFR part 922, subpart T.

III. Classification

National Marine Sanctuaries Act

NOAA has determined that the designation of the Wisconsin – Lake Michigan National Marine Sanctuary will not have a negative impact on the National Marine Sanctuary System and that sufficient resources exist to effectively implement sanctuary management plans and to update site characterizations. The finding for NMSA section 304(f) is published on the ONMS

website for Wisconsin-Lake Michigan designation at <http://sanctuaries.noaa.gov/wisconsin/>.

National Environmental Policy Act

NOAA has prepared a draft environmental impact statement to evaluate the environmental effects of the proposed rulemaking and alternatives as required by NEPA (42 U.S.C. 4321 *et seq.*) and the NMSA. Copies of the DEIS and related DMP are available at the address and web site listed in the ADDRESSES section of this proposed rule. NOAA is also soliciting public comments on the DEIS and DMP. Responses to comments received on this proposed rule as well as on the DEIS and draft management plan will be published in the final environmental impact statement and preamble to the final rule.

Coastal Zone Management Act

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires Federal agencies to consult with a state's coastal program on potential Federal regulations having an effect on state waters. Because WLMNMS encompasses a portion of the Wisconsin State waters, NOAA intends to submit a copy of this proposed rule and supporting documents to the State of Wisconsin Coastal Zone Management Program for evaluation of Federal consistency under the CZMA. NOAA will publish the final rule and designation only after completion of the consultation requirements under the CZMA.

Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132 because NOAA supplements and complements state and local laws under the NMSA.

National Historic Preservation Act

The National Historic Preservation Act (NHPA; 16 U.S.C. 470 et seq.) is intended to preserve historical and archaeological sites in the United States of America. The act created the National Register of Historic Places, the list of National Historic Landmarks, and State Historic Preservation Offices. Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by ACHP (36 CFR part 800 et seq.). In fulfilling its responsibilities under the NHPA, NOAA is seeking to identify consulting parties in addition to the State Historic Preservation Officer (SHPO), and will complete the identification of historic properties and the assessment of the effects of the undertaking on such properties in scheduled consultations with those identified parties and the SHPO. By this notice NOAA seeks public input, particularly in regard to the identification of historic properties within the proposed areas of potential effect. Pursuant to 36 CFR 800.16(l)(1), historic properties includes: “any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. The term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural

importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.” If you, your organization(s), or business(es) would like to be considered a “consulting party” under Section 106 please contact the individual listed under the heading FOR FURTHER INFORMATION CONTACT; include contact information for the principal representative for the consultation; and describe you or your party’s interest in the proposed designation. In accordance with 36 CFR 800.3(f)(3), NOAA will consider all “consulting party” requests but has ultimate discretion in determining and inviting additional consulting parties.

Regulatory Flexibility Act

This analysis seeks to fulfill the requirements of Executive Order 12866 and the Regulatory Flexibility Act. The Small Business Administration has established thresholds on the designation of businesses as “small entities”. A finfish fishing businesses is considered a small business if it has annual receipts of less than \$20.5 million. Scenic and Sightseeing and Recreational industries are considered small businesses if they have annual receipts not in excess of \$7.5 million. According to these limits, each of the businesses potentially affected by the proposed rule would most likely be small businesses. However, as further discussed below, these regulations will not have a significant economic impact on the affected small entities, and the Chief Counsel for Regulations for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have significant economic impact on a substantial number of small entities. Thus, NOAA is not required to and has not prepared an initial regulatory flexibility analysis.

Methodology. The analysis here is based on limited quantitative information on how much each activity occurs within the proposed sanctuary. Consequently, the result is more qualitative than quantitative.

Scales Used for Assessing Impacts. For assessing levels of impacts within an alternative, NOAA used three levels; “negligible”, “moderate” and “high” plus “no impacts”. For levels of impacts within the proposed alternatives being analyzed, negligible means very low benefits, costs, or net benefits (less than 1% change). Moderate impacts would be more than 1% but less than or equal to 10%, and high impacts would be more than 10%. For market economic values (revenue, costs, and profits), negligible would mean no likely impact whereas moderate and high could mean some measurable impact on market economic values at the levels noted above. NOAA analyzed the proposed national marine sanctuary described above.

Small business user groups include commercial fishing operation, recreation-tourism related businesses, and land use and development businesses. Other user groups not included here are research and education, people who receive passive economic use value from stabilization or improvement to the proposed sanctuary resources, none of whom are small businesses.

Proposed Action.

Prohibition on damaging a sanctuary resource. Small businesses that could potentially be impacted from the proposed prohibition on damaging a sanctuary resource include commercial fishing, recreational fishing and diving. This regulation is expected to have no to minimal impact on commercial fishermen because it is coextensive with existing state law. The sanctuary will

assist the state in notifying the public, including fishermen of the locations of known and suspected shipwreck sites, which will enable them to avoid snagging and damaging their gear on shipwreck sites. Lastly divers and other recreational water users will still be able to use the resource, but will not be able to take sanctuary resources. Therefore the impact for this user group from this prohibition is “no impact”.

Prohibition on anchoring or grapppling into a shipwreck site. Commercial fishermen use trap nets or gill nets which are anchored down, but it is unlikely that fishermen would anchor their nets near known shipwrecks due to snagging and the potential to have their gear damaged. Thus, the expected impact to commercial fishermen is negligible. The impact is also expected to be negligible for dive charters who would no longer be able to anchor on or grapple into a shipwreck site. NOAA is planning to add mooring buoys and provide anchoring best practices guidelines to facilitate divers to visit the shipwreck sites without damaging the fragile wrecks.

Prohibition on interfering with an investigation. There is no evidence that any small business in the area would be affected by this prohibition. Therefore, the prohibition is expected to have no impact on small businesses.

Thus, the overall expected impact to all these businesses in the preferred alternative is “no impact,” and the Chief Counsel for Regulations for the Department of Commerce has certified that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

ONMS has a valid Office of Management and Budget (OMB) control number (0648–0141) for the collection of public information related to the processing of ONMS permits across the National Marine Sanctuary System. NOAA’s proposal to create WLMNMS would likely result in an increase in the number of requests for ONMS general permits, special use permits, certifications, and authorizations because this action proposes to add general permits and special use permits, certifications, appeals, and the authority to authorize other valid federal, state, or local leases, permits, licenses, approvals, or other authorizations. An increase in the number of ONMS permit requests would require a change to the reporting burden certified for OMB control number 0648–0141. An update to this control number for the processing of ONMS permits would be requested as part of the final rule for sanctuary expansion.

Nationwide, NOAA issues approximately 500 national marine sanctuary permits each year. Of this amount, WLMNMS is expected to add 4 to 5 permit requests per year. The public reporting burden for national marine sanctuaries permits is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

Send comments regarding the burden estimate for this data collection requirement, or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA (see ADDRESSES) and by email to OIRA_submission@omb.eop.gov, or fax to (202) 395–7285. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the

requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

IV. Request for Comments

NOAA requests comments on this proposed rule by March 31, 2017. In addition to requesting comments on this proposed rule, NOAA is also soliciting input on the DEIS and DMP. In addition NOAA would like the public comments on the proposed name for the sanctuary.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Historic preservation, Intergovernmental relations, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife.

Dated: December 22, 2016.

W. Russell Callender,

Assistant Administrator

for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons discussed in the preamble, the National Oceanic and Atmospheric Administration proposes to amend 15 CFR part 922 as follows:

PART 922--NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for 15 CFR part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 et seq.

2. Revise §922.1 to read as follows:

§922.1 Applicability of regulations.

Unless noted otherwise, the regulations in subparts A, D, and E of this part apply to all National Marine Sanctuaries and related site-specific regulations set forth in this part. Subparts B and C of this part apply to the sanctuary nomination process and to the designation of future Sanctuaries.

3. Amend §922.3 by revising the definition of “Sanctuary resource” to read as follows:

§922.3 Definitions.

** * * *

Sanctuary resource means any living or non-living resource of a National Marine

Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not

limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource means an underwater cultural resource as defined at § 922.191. For Wisconsin - Lake Michigan National Marine Sanctuary, sanctuary resource is defined at §922.211(a).

* * * * *

4. Revise §922.40 to read as follows:

§922.40 Purpose.

The purpose of the regulations in this subpart and in the site-specific subparts is to implement the designations of the National Marine Sanctuaries by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries are found at §§ 922.160 and 922.180, respectively.

5. Revise §922.41 to read as follows:

§ 922.41 Boundaries.

The boundary for each of the National Marine Sanctuaries is set forth in the site-specific regulations covered by this part.

6. Revise §922.42 to read as follows:

§ 922.42 Allowed activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in the site-specific regulations covered by this part, subject to any emergency regulations promulgated under this part, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including but not limited to, Federal, Tribal, and State fishery management authorities, and subject to the provisions of section 312 of the National Marine Sanctuaries Act (NMSA), (16 U.S.C. 1431 et seq.). The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

7. Revise §922.43 to read as follows:

§ 922.43 Prohibited or otherwise regulated activities.

The site-specific regulations applicable to the activities specified therein are set forth in the subparts covered by this part.

8. Revise §922.44 to read as follows:

§ 922.44 Emergency regulations.

- (a) Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition.
- (b) The provisions of this section do not apply to the following national marine sanctuaries with site-specific regulations that establish procedures for issuing emergency regulations:
 - (1) Cordell Bank National Marine Sanctuary, §922.112(e).
 - (2) Florida Keys National Marine Sanctuary, §922.165.
 - (3) Hawaiian Islands Humpback Whale National Marine Sanctuary, §922.185.
 - (4) Thunder Bay National Marine Sanctuary, §922.196.
 - (5) [Reserved]
 - (6) Wisconsin - Lake Michigan National Marine Sanctuary, §922.214.

9. Amend §922.47 by revising paragraph (b) to read as follows:

§922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.

(b) The prohibitions listed in subparts F through P and R through T of this part do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in

existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as the Director deems necessary to achieve the purposes for which the Sanctuary was designated.

10. Revise §922.48 to read as follows:

§ 922.48 National Marine Sanctuary permits - application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by subparts F through O and S and T of this part, if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subparts F through O and S and T, as appropriate. For the Florida Keys National Marine Sanctuary, a person may conduct an activity prohibited by subpart P of this part if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.166. For the Thunder Bay National Marine Sanctuary and Underwater Preserve, a

person may conduct an activity prohibited by subpart R of this part in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.195.

(b) Applications for permits to conduct activities otherwise prohibited by subparts F through O and S and T of this part, should be addressed to the Director and sent to the address specified in subparts F through O of this part, or subparts R through T of this part, as appropriate. An application must include:

- (1) A detailed description of the proposed activity including a timetable for completion;
- (2) The equipment, personnel and methodology to be employed;
- (3) The qualifications and experience of all personnel;
- (4) The potential effects of the activity, if any, on Sanctuary resources and qualities; and
- (5) Copies of all other required licenses, permits, approvals or other authorizations.

(c) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons or entity, within or outside the Federal government, and may hold a public hearing, as deemed appropriate.

(d) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct a prohibited activity, in accordance with the criteria found in subparts F through O of this part, or subparts R through T of this part, as appropriate. The Director shall further impose, at a minimum, the conditions set forth in the relevant subpart.

(e) A permit granted pursuant to this section is nontransferable.

(f) The Director may amend, suspend, or revoke a permit issued pursuant to this section for good cause. The Director may deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms and conditions of a permit or of the regulations set forth in this section or subparts F through O of this part, or subparts R through T of this part or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

11. Revise § 922.49 to read as follows:

§ 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by subparts L through P of this part, or subparts R through T of this part, if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary after the effective date of the regulations in subpart P, provided that:

(1) The applicant notifies the Director, in writing, of the application for such authorization (and of any application for an amendment, renewal, or extension of such authorization) within fifteen (15) days of the date of filing of the application or the effective date of Sanctuary designation, or

in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, whichever is later;

(2) The applicant complies with the other provisions of this section;

(3) The Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal, or extension); and

(4) The applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by subparts L through P of this part, or subparts R through T of this part, as appropriate.

(c) Notification of filings of applications should be sent to the Director, Office of National Marine Sanctuaries at the address specified in subparts L through P of this part, or subparts R through T of this part, as appropriate. A copy of the application must accompany the notification.

(d) The Director may request additional information from the applicant as he or she deems reasonably necessary to determine whether to object to issuance of an authorization described in paragraph (a) of this section, or what terms and conditions are reasonably necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the application.

(e) The Director shall notify, in writing, the agency to which application has been made of his or her pending review of the application and possible objection to issuance. Upon completion of review of the application and information received with respect thereto, the Director shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems reasonably necessary to protect Sanctuary resources and qualities, and reasons therefor.

(f) The Director may amend the terms and conditions deemed reasonably necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the provisions of § 922.50.

12. Revise § 922.50 to read as follows:

§ 922.50 Appeals of administrative action.

(a)(1) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a National Marine Sanctuary permit; an applicant for, or a holder of, a Special Use permit issued pursuant to section 310 of the Act; a person requesting certification of an existing lease, permit, license or right of subsistence use or access under § 922.47; or, for those Sanctuaries described in subparts L through P and R

through T of this part, an applicant for a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction (hereinafter appellant) may appeal to the Assistant Administrator:

(i) The granting, denial, conditioning, amendment, suspension or revocation by the Director of a National Marine Sanctuary or Special Use permit;

(ii) The conditioning, amendment, suspension or revocation of a certification under § 922.47; or

(iii) For those Sanctuaries described in subparts L through P and subpart R through T, the objection to issuance of or the imposition of terms and conditions on a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(2) For those National Marine Sanctuaries described in subparts F through K and S and T of this part, any interested person may also appeal the same actions described in paragraphs (a)(1)(i) and (ii) of this section. For appeals arising from actions taken with respect to these National Marine Sanctuaries, the term “appellant” includes any such interested persons.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) by the Director appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director. Appeals should be addressed to the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910.

(c)(1) The Assistant Administrator may request the appellant to submit such information as the Assistant Administrator deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator within 45 days of the

postmark date of the request. The Assistant Administrator may seek the views of any other persons. For the Monitor National Marine Sanctuary, if the appellant has requested a hearing, the Assistant Administrator shall grant an informal hearing. For all other National Marine Sanctuaries, the Assistant Administrator may determine whether to hold an informal hearing on the appeal. If the Assistant Administrator determines that an informal hearing should be held, the Assistant Administrator may designate an officer before whom the hearing shall be held.

(2) The hearing officer shall give notice in the Federal Register of the time, place and subject matter of the hearing. The appellant and the Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator.

(d) The Assistant Administrator shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator shall notify the appellant of the final decision and the reason(s) therefore in writing. The Assistant Administrator's decision shall constitute final agency action for the purpose of the Administrative Procedure Act.

(e) Any time limit prescribed in or established under this section other than the 30-day limit for filing an appeal may be extended by the Assistant Administrator or hearing office for good cause.

Subpart S [Added and Reserved]

13. Add and reserve subpart S.

14. Add subpart T to read as follows:

SUBPART T – WISCONSIN - LAKE MICHIGAN NATIONAL MARINE SANCTUARY

Sec.

922.210 Boundary.

922.211 Definitions.

922.212 Co-management.

922.213 Prohibited or otherwise regulated activities.

922.214 Emergency regulations.

922.215 Permit procedures and review criteria.

922.216 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

Appendix A to Subpart T of Part 922 — Wisconsin - Lake Michigan Marine Sanctuary

Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas

Appendix B to Subpart T of Part 922 — Wisconsin - Lake Michigan Marine Sanctuary Terms of Designation

§ 922.210 Boundary.

The Wisconsin – Lake Michigan National Marine Sanctuary consists of an area of approximately 812 square nautical miles (nmi²) (1,075 sq. mi) of Lake Michigan waters within the state of Wisconsin and the submerged lands thereunder, over, around, and under the

submerged underwater cultural resources in Lake Michigan. The precise boundary coordinates are listed in appendix A to this subpart. The eastern boundary of the sanctuary begins approximately 9.5 miles east of the Wisconsin shoreline in Lake Michigan at Point 1 roughly on the border between Manitowoc and Kewaunee County. From this point the boundary continues SSW in a straight line to Point 2 and then SW to Point 3 at roughly the border between Ozaukee and Milwaukee County. From this point the boundary continues west towards Point 4 until it intersects the shoreline at the ordinary high water mark near Mequon, WI. From this intersection the boundary continues north following the shoreline cutting across the mouths of creeks and streams until it intersects the line segment formed between Point 5 and Point 6 at the end of the southern breakwater at the mouth of Sauk Creek at Port Washington. From this intersection the boundary continues across the river mouth towards Point 6 until it intersects the shoreline at the ordinary high water mark at the end of the northern breakwater. From this intersection the boundary continues north following the shoreline until it intersects the line segment formed between Point 7 and Point 8 at the end of the southern breakwater at the mouth of the Sheboygan River. From this intersection the boundary continues across the river mouth towards Point 8 until it intersects the shoreline at the ordinary high water mark at the end of the northern breakwater. From this intersection the boundary continues north along the shoreline until it intersects the line segment formed between Point 9 and Point 10 at the end of the southern breakwater at the mouth of Manitowoc Harbor. From this intersection the boundary continues across the harbor mouth towards Point until it intersects the shoreline at the ordinary high water mark¹⁰ at the end of the northern breakwater. From this intersection the boundary continues north following the shoreline

until it intersects the line segment formed between Point 11 and Point 12 at the end of the western breakwater at the mouth of East Twin River. From this intersection the boundary continues across the river mouth towards Point 12 until it intersects the shoreline at the ordinary high water mark at the end of the eastern breakwater. From this intersection the boundary follows the shoreline NE around Rawley Point and then NNW until it intersects the line segment formed between Point 13 and Point 14 along the shoreline at approximately the border between Manitowoc and Kewaunee County near Twin Creeks, WI. Finally, from this intersection the boundary moves east across Lake Michigan to Point 14.

§ 922.211 Definitions.

(a) The following terms are defined for purposes of this subpart:

(1) Sanctuary resource means all prehistoric, historic, archaeological, and cultural sites and artifacts within the sanctuary boundary, including but not limited to, all shipwrecks and related components.

(2) Shipwreck site means any sunken watercraft, its components, cargo, contents, and associated debris field.

(b) All other terms appearing in the regulations in this subpart are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 et seq., and 16 U.S.C. 1431 et seq.

§ 922.212 Co-management.

NOAA has primary responsibility for the management of the Sanctuary pursuant to the Act. However, as the Sanctuary is in state waters, NOAA will co-manage the Sanctuary in

collaboration with the State of Wisconsin. The Director may enter into a Memorandum of Understanding regarding this collaboration that may address, but not be limited to, such aspects as areas of mutual concern, including Sanctuary resource protection, programs, permitting, activities, development, and threats to Sanctuary resources.

§ 922.213 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraph (b) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Moving, removing, recovering, altering, destroying, possessing, or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a sanctuary resource.

(2) Grappling into or anchoring on shipwreck sites.

(3) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or any permit issued under the Act.

(b) The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to any activity necessary to respond to an emergency threatening life, property or the environment; or to activities necessary for valid law enforcement purposes.

§ 922.214 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary

resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of Wisconsin or her/his designee or designated agency.

(b) Emergency regulations remain in effect until a date fixed in the rule or six months after the effective date, whichever is earlier. The rule may be extended once for not more than six months.

§ 922.215 Permit procedures and review criteria.

(a) Authority to issue general permits. The Director may allow a person to conduct an activity that would otherwise be prohibited by this subpart, through issuance of a general permit, provided the applicant complies with:

- (1) The provisions of subpart E of this part; and
- (2) The relevant site specific regulations appearing in this subpart.

(b) Sanctuary general permit categories. The Director may issue a sanctuary general permit under this subpart, subject to such terms and conditions as he or she deems appropriate, if the Director finds that the proposed activity falls within one of the following categories:

- (1) Research - activities that constitute scientific research on or scientific monitoring of national marine sanctuary resources or qualities;
- (2) Education - activities that enhance public awareness, understanding, or appreciation of a national marine sanctuary or national marine sanctuary resources or qualities; or
- (3) Management - activities that assist in managing a national marine sanctuary.

(c) Review criteria. The Director shall not issue a permit under this subpart, unless he or she also finds that:

(1) The proposed activity will be conducted in a manner compatible with the primary objective of protection of national marine sanctuary resources and qualities, taking into account the following factors:

(i) The extent to which the conduct of the activity may diminish or enhance national marine sanctuary resources and qualities; and

(ii) Any indirect, secondary or cumulative effects of the activity.

(2) It is necessary to conduct the proposed activity within the national marine sanctuary to achieve its stated purpose.

(3) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's stated purpose and eliminate, minimize, or mitigate adverse effects on sanctuary resources and qualities as much as possible.

(4) The duration of the proposed activity and its effects are no longer than necessary to achieve the activity's stated purpose.

(5) The expected end value of the activity to the furtherance of national marine sanctuary goals and purposes outweighs any potential adverse impacts on sanctuary resources and qualities from the conduct of the activity.

(6) The applicant is professionally qualified to conduct and complete the proposed activity.

(7) The applicant has adequate financial resources available to conduct and complete the

proposed activity and terms and conditions of the permit.

(8) There are no other factors that would make the issuance of a permit for the activity inappropriate.

§ 922.216 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by § 922.213(a)(1) through (3) if such activity is specifically authorized by a valid Federal, state, or local lease, permit, license, approval, or other authorization, or tribal right of subsistence use or access in existence prior to the effective date of sanctuary designation and within the sanctuary designated area and complies with § 922.49 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

(b) In considering whether to make the certifications called for in this section, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate.

(c) The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would otherwise be inconsistent with any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit, license, or other authorization and the issuing agency and shall set forth reason(s) for the action taken.

(d) Requests for findings or certifications should be addressed to the Director, Office of National

Marine Sanctuaries; ATTN: Sanctuary Superintendent, Wisconsin - Lake Michigan National Marine Sanctuary, 1305 East West Hwy, 11th Floor, Silver Spring, MD 20910. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(e) For an activity described in paragraph (a) of this section, the holder of the authorization or right may conduct the activity prohibited by § 922.213(a)(1) through (3) provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 180 days of the effective date of Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this section; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(f) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by § 922.213 may conduct the activity without being in violation of applicable provisions of § 922.213, pending final agency action on his or her certification request, provided the holder is otherwise in compliance with this section.

(g) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The Director must receive the information requested within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(h) The Director may amend any certification made under this section whenever additional information becomes available that he/she determines justifies such an amendment.

(i) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this section, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.50.

(k) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

Appendix A to Subpart T of Part 922 — Wisconsin - Lake Michigan Marine Sanctuary Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Table A1 – Coordinates for Sanctuary

Point_ID	Latitude	Longitude

1	44.32749	-87.34795
2	43.45716	-87.48817
3	43.19198	-87.62813
4*	43.19203	-87.89245
5*	43.38447	-87.86079
6*	43.38523	-87.85963
7*	43.74858	-87.69479
8*	43.74946	-87.69265
9*	44.09135	-87.64377
10*	44.09262	-87.64373
11*	44.14226	-87.56161
12*	44.14267	-87.56069
13*	44.32751	-87.54400
14	44.32749	-87.34795

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

Appendix B to Subpart T of Part 922 — Wisconsin - Lake Michigan Marine Sanctuary Terms of Designation

Terms of Designation for the Proposed Wisconsin - Lake Michigan National Marine Sanctuary

Under the authority of the National Marine Sanctuaries Act, as amended (the “Act” or “NMSA”), 16 U.S.C. 1431 et seq., 1,075 square miles of Lake Michigan off the coast of Wisconsin’s coastal counties of Ozaukee, Sheboygan and Manitowoc are hereby designated as a National Marine Sanctuary for the purposes of providing long-term protection and management of the historical resources and recreational, research, educational, and aesthetic qualities of the area.

Article I: Effect of Designation

The NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the historical resources and recreational, research, and educational qualities of the Wisconsin - Lake Michigan National Marine Sanctuary (the “Sanctuary”). Section 1 of Article IV of this Designation Document lists those activities that may have to be regulated on the effective date of designation, or at some later date, in order to protect Sanctuary resources and qualities. Listing an activity does not necessarily mean that it will be regulated; however, if an activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended by the same procedures by which the original Sanctuary designation was made.

Article II: Description of the Area

The Wisconsin – Lake Michigan National Marine Sanctuary consists of an area of approximately 812 square nautical miles (nmi²) (1,075 sq. mi) of Lake Michigan waters within the state of Wisconsin and the submerged lands thereunder, over, around, and under the submerged underwater cultural resources in Lake Michigan. The eastern boundary of the sanctuary begins approximately 9.5 miles east of the Wisconsin shoreline in Lake Michigan roughly on the border between Manitowoc and Kewaunee County. From this point the boundary continues in Lake Michigan roughly to the SSW until it intersects the border between Ozaukee and Milwaukee County at a point approximately 13 miles east of the shoreline. The southern boundary continues west approximating the border between these same two counties until it intersects the shoreline near Mequon, WI. The western boundary continues north following the shoreline for approximately 90 miles cutting across the mouths of rivers and streams; specifically those of Sauk Creek at Port Washington, the Sheboygan River at Sheboygan, Manitowoc Harbor as Manitowoc, and East Twin River at Two Rivers as well as any other smaller streams and creeks. The western boundary ends at roughly the border between Manitowoc and Kewaunee County along the shoreline near Twin Creeks, WI. The northern boundary continues from the shoreline east approximating the border between these same two counties back to its point of origin 9.5 miles offshore.

Article III: Special Characteristics of the Area

The historic shipwrecks in the Wisconsin-Lake Michigan National Marine Sanctuary are representative of vessels that sailed and steamed the Lake Michigan corridor, carrying grain and raw materials east as other vessels came west loaded with coal, manufactured goods, and immigrants. Eighteen of the 37 shipwrecks are listed on the National Register of Historic Places. Many of the shipwrecks in the proposed sanctuary retain an unusual degree of architectural integrity, with 14 vessels virtually intact. Well preserved by Lake Michigan's cold, fresh water, the shipwrecks and related underwater cultural sites in and around the Wisconsin – Lake Michigan National Marine Sanctuary possess exceptional historical, archaeological and recreational value.

Article IV: Scope of Regulations

Section 1. Activities Subject to Regulation. The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the historical resources and recreational, research and educational qualities of the area:

- a. Damaging sanctuary resources.
- b. Using grappling hooks and anchors at shipwreck sites.
- c. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation issued under the Act.
- d. Reporting shipwreck discoveries and locations to the sanctuary.

Section 2. Emergencies. Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality; or minimize the imminent risk of such destruction, loss, or injury, any activity, including those not listed in Section 1, is subject to immediate temporary regulation. An emergency regulation shall not take effect without the approval of the Governor of Wisconsin or her/his designee or designated agency.

Article V: Relation to Other Regulatory Programs

Section 1. Fishing Regulations, Licenses, and Permits. Fishing in the Sanctuary shall not be regulated as part of the Sanctuary management regime authorized by the Act. However, fishing in the Sanctuary may be regulated by other Federal, State, Tribal and local authorities of competent jurisdiction, and designation of the Sanctuary shall have no effect on any regulation, permit, or license issued thereunder.

Section 2. Other Regulations, Licenses, and Permits. If any valid regulation issued by any Federal, state, Tribal, or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director of the Office of National Marine Sanctuaries, National Oceanic and Atmospheric Administration, or designee, in consultation with the State of Wisconsin, to be more protective of Sanctuary resources and qualities shall govern. Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval, or other authorization issued by any Federal, State, Tribal, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or designee, as a result of this designation, or as a

result of any Sanctuary regulation, if such lease, permit, license, approval, or other authorization, or right of subsistence use or access was issued or in existence as of the effective date of this designation. However, the Secretary of Commerce or designee, in consultation with the State of Wisconsin, may regulate the exercise of such authorization or right consistent with the purposes for which the Sanctuary is designated.

Article VI. Alteration of this Designation

The terms of designation may be modified only by the same procedures by which the original designation is made, including public meetings, consultation according to the NMSA.

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